

Appendix G

9VAC25-10-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 1.1:1 (§9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Agency" means the Department of Environmental Quality.

"Approving authority" means the collegial body of the State Water Control Board, established in response to the Environmental Protection Law as the legal authority to adopt regulations.

"Director" means the director of the Department of Environmental Quality or his designee.

"Environmental Protection Law" means the provisions found in Virginia statutory law authorizing the approving authority or agency, or both, to make regulations or containing procedural requirements thereof including, but not limited to, Chapter 3.1 (§62.1-44.2 et seq.), Chapter 3.2 (§62.1-44.36 et seq.), Chapter 24 (§62.1-242 et seq.), and Chapter 25 (§62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in §9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in §9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

Unless specifically defined in the Environmental Protection Law or in this chapter, terms used shall have the meanings commonly ascribed to them.

9VAC25-10-20. General.

A. The procedures in 9VAC25-10-30 of this chapter shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (§9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§9-6.14:4.1 C).

B. The failure of any person to receive any notice or copies of any documents provided under this chapter shall not affect the validity of any regulation.

C. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

9VAC25-10-30. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the approving authority specifically authorizes the agency to proceed without using the participatory approach.
2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to

assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

- a. A description of the subject matter of the planned regulation.
- b. A description of the intent of the planned regulation.
- c. A brief statement as to the need for regulatory action.
- d. A brief description of alternatives available, if any, to meet the need.
- e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the development of any proposal.
- f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
- g. A statement of the agency's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.
- h. A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the agency makes a decision to pursue the alternative provided in subsection C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the agency to proceed without holding a public meeting.

In those cases where public meetings will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meetings.

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.
2. Distribution by mail to persons on the lists established under subsection A of this section.

F. After consideration of public input, the agency may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.
2. A request for comments on the costs and benefits of the proposal.
3. The identity of any locality particularly affected by the proposed regulation.
4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:
 - a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.
 - b. A statement of estimated impact:
 - (1) Projected number and types of regulated entities or persons affected.
 - (2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.
 - (3) Projected cost to the agency for implementation and enforcement.
 - (4) The beneficial impact the regulation is designed to produce.
 - c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.
 - d. An estimate of the impact of the proposed regulation upon small businesses as defined in §9-199 of the Code of Virginia or organizations in Virginia.
 - e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.
 - f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.
 - g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.
5. The date, time and place of at least one public hearing held in accordance with §9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The public hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearings may be held in such locations as the agency determines will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with §9-6.14:8 of the Administrative Process Act.

I. The public comment period shall close no less than 60 days after publication of the NOPC in The Virginia Register of Regulations.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

- a. Publication in The Virginia Register of Regulations.
 - b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.
2. Distribution by mail to persons on the lists established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

9VAC25-10-40. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to May 18, 1994, shall be processed in accordance with the emergency amendments to 9VAC25-10-10 et seq., Public Participation Guidelines, which are effective from June 29, 1993, until June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.

B. This chapter shall supersede and repeal emergency amendments to 9VAC25-10-10 et seq., Public Participation Guidelines, which became effective on June 29, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to May 18, 1994, shall be processed in accordance with this chapter.